

**“SOMEONE IS THREATENING TO FENCE OFF
A ROAD I’VE BEEN USING FOR YEARS”**

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People often ask the Sheriff or the Public Works Department to take some action involving a road. A common situation is where someone has threatened to put a fence or a locked gate across a road that has been used for years. It is important to understand when the County can -- and cannot -- become involved.

Public roads are those established by **an easement granted to the public (or the County) or a dedication of the actual land (“fee ownership”) to the public (or the County)**. This will be shown on a recorded plat, map or survey, or in a separate recorded public easement or deed of dedication. If there is a public easement or dedication, **the County holds the road as trustee for the public and can** take action if someone is threatening to interfere with the use of the road. This action might be a letter of warning from the Public Works Department or the County Attorney, a citation by the Sheriff for obstructing a public road in violation of A.R.S. 13-2906, or the filing of a civil or criminal complaint in court. (**Maintenance** is a separate issue. The County maintains public roads only if they have been **formally accepted into the County maintenance system.**)

Not all roads are public. If a road exists by virtue of a **private easement** (a recorded easement from one property owner to another, as opposed to one granted to the general public), this is **not** something the County enforces. If the person who owns the land is “unreasonably interfering” with the use of the private easement, this is generally a matter to be resolved between the owner and the users or by a civil complaint filed in court by the users. Similarly, **the roads in a subdivision may be private rather than public.** Subdivision roads are generally public, but not always. You have to look at the plat to see whether they have been granted or dedicated to the public. If they have not, the situation is the same as with a private easement -- the County cannot become involved, and any problems generally must be resolved between the lot owners or through the homeowners association.

There are situations where there is a public easement or dedication, but **the actual road is located outside the public right of way.** Here as well, the County generally cannot become involved if the problem is on a portion of the road outside the right of way. The people who have been using the road may have acquired some “prescriptive rights” (as described in the next paragraph), but this is a private matter to be resolved between them and the property owner.

There are situations where there is **no recorded right of way -- public or private.** The road has simply “evolved” over the years. Again, this is not something the County can become involved in. If the road has been in **regular and continuous use for 10 or more years**, the people who have been using it (or even the general public) may have acquired a **“prescriptive easement”** (also known as an “easement by adverse possession”). They may be able to establish their right to continue using the road and prevent the property owner from unreasonably interfering. This may require the filing of a civil complaint in court. (By the same token, if the users cannot establish a prescriptive easement, the property owner may be within his rights in putting up a fence or gate.)

Lastly, there are many areas where there is **a public right of way but no road.** In other words, the right of way exists only “on paper.” Even though there is no road, **the County still controls the right of way and has the same enforcement rights as if there were a road.** A property owner cannot simply clear a road or put up a fence because this seems like a good idea. Any work within the right of way requires **a permit from the Public Works Department.**

Unless the status of the road and the rights of the parties are clear, the Sheriff’s Office generally cannot become involved in disputes concerning it. If there is any uncertainty as to whether a road legally exists, whether it is public or private, etc., this must be resolved as a **civil matter** between the persons involved in the dispute.

We will be happy to tell you if the road is a public one according to our records. If it is not, however, we cannot advise you as to what you should do. It is always better to seek the advice of an attorney or title company than to risk liability for yourself by simply tearing down a fence or a gate or threatening your neighbor.